

TDR FAQs

What is the Transfer of Development Rights Program?

The Transfer of Development Rights (TDR) Program is a land conservation and community development process that is administered by Santa Fe County. The Program allows property owners of agricultural and other environmentally and culturally valuable land to voluntarily sell their development rights in exchange for TDR Certificates. Other property owners (often developers) can buy the TDR Certificates for the right to build at a greater density in locations where development is more appropriate.

The Program offers land owners in the designated “Sending Areas” a financial benefit to conserve their land while giving developers an incentive for building more livable communities in designated “Receiving Areas” where growth can be sustained by existing infrastructure and supported with community-based planning. The Program is an opportunity for land owners and developers to leave a legacy of environmental stewardship and sustainable development in Santa Fe County.

What are Sending Areas and Receiving Areas?

Land that is being preserved from development is called the Sending Area. The Sending Area can be any land that has agricultural, environmental or cultural values and should be protected from development.

A Receiving Area is land that is designated for future development that contributes to neighborhoods. of land uses, a variety of housing opportunities, alternative transportation systems and

The specific criteria for the Sending Area and the Receiving Area are outlined in the Sustainable Land Development Code. See additional questions below.

How else is the County participating in the Program?

Santa Fe County is severing the development rights of property it owns and manages as public Open Space. The County will use the proceeds from selling the TDR Certificates to preserve more land that has agricultural, environmental or cultural values that benefit the public.

Could the County designate new Sending Areas and Receiving Areas in the future?

Yes. The Board of County Commissioners may amend the ordinance that created the Program and change the eligibility criteria for a Sending Area or a Receiving Area. Any community in Santa Fe County can prepare a community plan and a Community Plan Overlay to identify additional Sending Areas or Receiving Areas.

Are there Sending Areas or Receiving Areas outside of Santa Fe County?

No. The Program only applies to land within Santa Fe County and outside of municipal, state, federal and tribal jurisdiction.

SENDING AREA

I want to sell the development rights to my land. What are the eligibility criteria?

The Santa Fe County Sustainable Growth Management Plan and Section 12.14 of the Sustainable Land Development Code outline the criteria for land that is eligible for a “Sending area.” These are:

- From Sending areas identified by a Community District Overlay Zones;

- From areas designated as an environmental and resource protection overlay, historic protection overlay or agricultural overlay;
- From sensitive environmental lands (e.g. riparian habitats, endangered or threatened species habitat, archaeological sites);
- From agricultural land;
- From lands providing open space and preserving scenic vistas, natural features, and areas of special character; and
- Through a Transfer of Development Rights as part of a development order granting Beneficial Use and Value Determination relief.

Is a TDR the same as a conservation easement?

No, but they are very similar tools for permanently preserving land. Conservation easements are legal agreements between a property owner and a land trust or a similar organization. TDR programs are available only through local governments.

How many TDR Certificates can I expect from my land?

The number of TDR Certificates depends on the size of the Sending Area and the density of development permitted within the zoning district.

The number of qualified TDR Certificates allocated to a Sending Area is determined by dividing the net acres that meet the Sending Area criteria by the number of acres required to build one dwelling unit on the property as determined by the property’s zoning district. For example, if an owner of a 2.5-acre property with one house in the Traditional Community zoning district wants to sever the remaining development rights, then the calculation is as follows:

Gross Acres	2.5 acres
(minus) Acres for Existing Dwelling Units	.75
(minus) Acres of Planned Dwelling Units	0
(minus) Acres Already Restricted from Development	0
(equals) Net Acres of Sending Area	1.75
(divided by) Acres Required for one Dwelling Unit in the Zoning District	.75
(equals) TDR Certificates*	2.5

*If the calculation results in a fraction, the number of Certificates will be rounded down to the whole number unless the Land Use Administrator approves a minor administrative deviation pursuant to Section 4.9.7.6 of the SLCD, provided the deviation does not exceed five-tenths of a percent (.5%).

The property owner will be eligible for 2 Certificates.

There are a few other conditions that will reduce the amount of land that can be included in the calculation of the Sending Area, including:

- Privately-owned land that is already dedicated as open space.
- Land dedicated as open space as part of a subdivision.
- Lands already protected from development through a conservation easement, deed restriction or other legal agreement.

The land encumbered by a road right of way, public trail or utility easement, setback, acequia, or floodplain are not subtracted from the acres when estimating the number of TDR Certificates.

Can I develop in the Sending Area?

Any new development in the Sending Area is very limited. A “dwelling unit” (e.g. – house) is not permitted in the Sending Area; however, the development of a structure is permitted as long as the structure is used to support the purpose of the TDR. Section 12.14.5.2 of the Sustainable Land Development Code says, “Development on a Sending Area shall be limited to those uses and or structures that promote the values of the site for the reason the TDR Sending Area was created, so long as such development does not include any dwelling units.”

For example, a Sending Area may include a multi-use trail, benches and shade structures if the purpose of the TDR is for open space. Similarly, a farmer can build a barn or storage structure in the Sending Area because that land is used for irrigated agriculture.

Only development that directly supports the long-term use and preservation of the property can be permitted.

What is a Sending Area Plat?

The Sending Area Plat is a survey of the property that shows all of the existing and planned development and any proposed lots. It identifies any easements or other restrictions to future development. It is used to calculate the number of TDR Certificates that a property owner can receive by severing their development rights. The TDR Administrator can provide a surveyor with a checklist of requirements for the Sending Area Plat. The Sending Area Plat must be signed by the Land Use Administrator and be recorded at the County Clerk before it can be redeemed.

What is a TDR Agreement?

The TDR Agreement is the legal document between a land owner and Santa Fe County that permanently retires the development rights to a property. The TDR Agreement outlines the conditions of the TDR Program. Only the Board of County Commissioners can approve the TDR Agreement.

Do I still own my property?

Absolutely. The Program does not change ownership of the property

Is the TDR permanent?

Yes. Section 12.14.13 of the Sustainable Land Development Code states, “Reinstitution of development rights on a Sending area is prohibited.”

Do I have to sever all of the development rights on my property?

No. A property owner can develop on the property as long as there are remaining development rights based on the size of the property and the zoning district.

Can I build a residence on my property after I have created TDRs?

A property owner may build a residence on their property only if there are any remaining development rights on the property and the development is located outside of the Sending Area.

Does the zoning district of my property change as a result of severing the development rights?

No. The zoning remains the same after TDR Agreement is approved or when the TDR Certificates are redeemed on a development project.

What if my property is zoned commercial, industrial or mixed use? Is the property still eligible as a Sending Area?

No. A property cannot be a Sending Area and a Receiving Area. These zoning districts are already identified as Receiving Areas.

What if I foreclose on my mortgage?

In the event of a foreclosure, the County will still enforce the TDR Agreement that limits development on the Sending Area. The foreclosure is between you and your lender.

RECEIVING AREA

I want to develop my land and at higher density. What are the criteria for the Receiving Area?

According to the Sustainable Land Development Code, a Certificate can be redeemed only within certain zoning districts. The following zoning districts are designated as Receiving Areas:

- Mixed Use
- Planned Development
- Industrial General
- Industrial Light
- Commercial General

Additionally, the property must have access to a public water and sewer systems and must have access from a public road. Communities may identify Receiving Areas through their Community Plan and Community District Overlay Zone.

Can a developer build anywhere with their TDR Certificates?

No. A developer can only redeem their TDR Certificates in the Mixed Use, Planned Development, Industrial General, Industrial Light and Commercial General zoning districts or if a Receiving Area is specifically identified in a Community Plan and Community District Overlay Zone. The property must have access to community water and sewer systems and a public road.

Does the Board of County Commissioners have to approve my development plan because it includes TDR Certificates?

No. Section 12.14.12 of the Sustainable Land Development Code states, "Development Approval Procedure. The procedures for review and approval of an application including the use of TDRs shall be the same as those procedures that would apply if no TDRs were being used."

What is the incentive for using TDR Certificates in the development project?

There are several ways a developer can redeem TDR Certificates and apply them to their project for additional density. One Certificate allows the property owner to develop additional dwelling, smaller lots, taller buildings or larger areas of impervious surfaces. Section 8 of the Sustainable Land Development Code identifies the "dimensional relief" from applying TDR Certificates.

Must I buy the Certificates before I apply for a development permit?

No. A developer can apply for a development without owning TDR Certificates. The developer can purchase the TDR Certificates after their development is approved, but they must be purchased prior to recording of the final plat of the development plan. Section 12.14.12.1 of the Sustainable Land Development Code states “TDR certificates shall be acquired prior to recordation of a final plat or Development Plan.”

APPLICATION PROCESS

How do I apply?

You can submit an application to the Planning Division in the Growth Management Department either by a paper application or through the [TDR Program webpage](#).

How does my application get approved?

The TDR Administrator will meet with the property owner and visit the property. If the property is eligible, the TDR Administrator will prepare a Qualification Report for approval by the Land Use Administrator and the property owner. Only the Board of County Commissioners has the authority to approve a TDR Agreement. The County’s Technical Advisory Committee may review a TDR Application if it includes a subdivision or land development.

Do I have to allow public access to my land?

No. Public access is not a requirement of the Program.

Can I include easements or other conditions when determining the Sending Area?

Yes. Property owners can include utility easements, access easements and other types of easements or restrictions on the Sending Area Plat.

Can I subdivide my property?

Yes, but it is not required. Buyers and sellers of TDR Certificates can subdivide their property as long as the subdivision design meets all of the requirements of the SLDC.

Is the Sending Area Plat the same thing as a subdivision?

No. Section 5.4.3.18 of the Sustainable Land Development Code states that the Sending Area Plat is not a subdivision.

How much does it cost?

The largest expense is the fee for a licensed surveyor to create the Sending Area Plat. There is a \$25.00 fee for the Sending Area Plat Permit. There are additional fees for recording the documents at the Clerk’s Office. The fee for recording the documents depends on the number of pages that will be recorded.

Please be advised property owner is responsible for paying all taxes, penalties, interest and fees due for that taxable year before a TDR Agreement can be approved.

How long does it take to get my application approved for TDR Certificates?

Each property and TDR application will have unique circumstances and timeframes for approval. The entire process could take as short as three months or as long as one year or more depending on the complexity of the application, the availability of surveyors, staffing capacity and the availability of information that must be included in the application.

Are there any property tax benefits?

Any changes to property taxes as a result of the TDR Program are determined by the County Assessor. Section 12.14.14 of the Sustainable Land Development Code states that “The County Assessor may review and adjust a property’s valuation in accordance with NMSA 1978, Chapter 7, Articles 35-38 to reflect valuation changes arising from the TDRs to or from a particular parcel.” The financial benefit from the Program is from the sale of Certificates and the additional development that is permitted.

TDR MARKETPLACE

What is the TDR Marketplace?

The County maintains a webpage called the TDR Marketplace as a central location for buyers and sellers to contact each other and negotiate a transaction. Otherwise, potential buyers and sellers are free to connect outside of the TDR Marketplace. Note that the new owner of a TDR Certificate must have the TDR Certificate signed by the Land Use Administrator, notarized and recorded at the County Clerk after they are bought.

I don’t own land. Can I still buy a TDR Certificate?

Yes. Anyone can buy or sell a TDR Certificate. A TDR Certificate can be bought, sold, traded, held as a financial investment (i.e. stocks and bonds) or donated to a community organization.

How can I buy or sell a TDR Certificate?

TDR Certificates can be bought and sold or traded by any means; however, TDR Certificates must be signed by the two parties and the Land Use Administrator then they are recorded at the Clerk’s office after they are sold.

Can the same land owner sell and buy TDR Certificates?

Yes, but the TDR Certificate cannot be used to send and receive development rights on the same property. The TDR Certificate must be sold from one property and redeemed at a different property.

What is the TDR Bank?

The TDR Bank is an account managed by the County that is used to manage transactions for the sale and purchase of TDR Certificates that are owned by the County.

What if I want to buy Certificates and there are not any for sale?

If there are not any TDR Certificates in the TDR Marketplace, then a property owner can pay a “Development Transfer Charge” to the TDR Bank. The TDR Bank determines the fee (see Section 12.14.18.2 of the Sustainable Land Development Code).

How much is a TDR worth?

The price of TDRs will vary since TDR purchases are private transactions. The TDR Program is entirely voluntary and market-driven.

How can I buy TDR Certificates if there are none available in the TDR Bank? What is the Development Transfer Charge?

A land owner can purchase a TDR Certificate from another party, including the County, but the owner can pay a fee to the County if there not any TDR Certificates for sale in the TDR Marketplace. This fee is called the Development Transfer Charge. The County sets the fee for each TDR Certificate.

WATER RIGHTS

Can a property owner get TDR Certificates for water rights?

Yes. A property that has irrigation water rights can permanently retire one acre-foot per year of water right in exchange for one TDR Certificate. Water rights for a well are not eligible; the owner must show proof of ownership of irrigation water rights.

If the application includes development of additional dwelling units, then the calculation for Certificates will be reduced by $\frac{1}{4}$ acre-foot of water to account for the water to be used by the future dwelling.

Where can I go to get proof of ownership of my irrigation water rights?

Go to the [Office of the State Engineer, Water Rights Division](#), to download a Declaration of Ownership of Water Rights.